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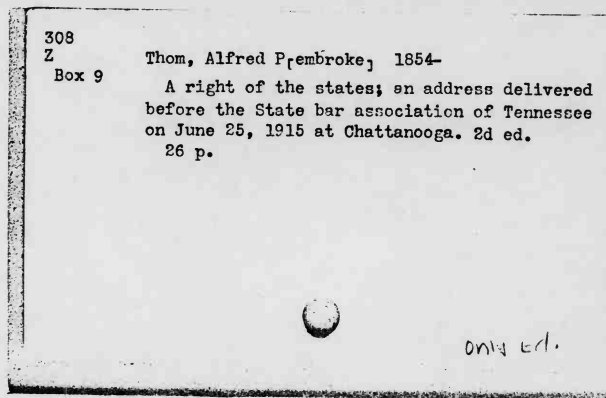
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A RIGHT OF THE STATES

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AN ADDRESS

DELIVERED BY

ALFRED P. THOM

OF WASHINGTON, D. C.

BEFORE THE

STATE BAR ASSOCIATION OF TENNESSEE

ON

JUNE 25, 1915

AT

CHATTANOOGA

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SECOND EDITION

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*Mr. President and Gentlemen of the Tennessee Bar Association:*

One hundred and twenty-six years ago the United States became a nation. On the 4th of March, 1789, they joined in putting into effect the Constitution which formed them into "a more perfect union" and organized them to take their place as a unit among the nations of the earth.

Only recently they had been separate and distinct colonies of Great Britain, legally foreign to each other, and were bound together by no ties except a sense, common to them all, of oppression and discontent and a common aspiration and purpose of liberty. They combined to declare and to fight for their independence, and to assert that, as free and individual States, they had "full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

During the succeeding epoch-making struggle, which marked the birth of a new nation, they sought to bind themselves together by something more enduring than the sympathies and exigencies of the existing war, and, to this end, adopted as their bond of union the Articles of Confederation. Jealous, however, of their separate and distinct autonomies, they were miserly in their grant of power to the central authority which they created. Wanting it to be efficient, but determined that it should possess none of their cherished sovereignty, they withheld from it the power to provide, through its own agencies, a national revenue. It could not levy taxes, but was made dependent upon the States for their respective contributions. It, therefore, could not build or equip a navy, nor raise or arm or pay an army. Thus it had no effective power to provide for the common defense, to protect any national right, or to command the respect or the fair treatment of foreign nations. Likewise, it had no power to control or regulate trade, either foreign or domestic. That power was carefully reserved by the States to themselves individually.

The Articles of Confederation were, therefore, soon found to be utterly inadequate to a national existence. It is true that they remained untouched during the continuance of the war. This, however, was not because they were satisfactory, but because every public energy, to the exclusion of all questions of domestic organization, was devoted to the achievement of independence.

A government without a purse, and hence without power to provide for the common defense, or to insure domestic tranquillity, was a mere "rope of sand" and could not long endure. From the standpoint of mere national existence, it was found utterly inadequate.

But there was another cause for dissatisfaction, which, in the condition of the public mind, temporarily freed from the fear of foreign invasion and insistently turning to the necessity of rebuilding domestic prosperity after the waste of war, was hardly of less importance than a provision for the common defense and for the preservation of the national existence. The needs of trade were becoming more and more apparent and its just regulation the subject of greater and more universal public concern.

In considering the causes which brought our Federal Constitution into existence, it is of peculiar interest at this time to study the influence which the desire for a uniform regulation of commerce had upon its adoption and upon its character.

When the war ended and independence was an accomplished fact, each State possessed a sovereignty which was practically unlimited over its foreign commerce and over its commerce with the other States. Between many of them there was a race of greed and selfishness for commercial advantage and supremacy.

It will be noted that each State possessed the power of imposing export taxes and could thus keep its products at home, excluding them from the use and enjoyment of the people of the other States; that each State possessed the power of imposing import duties and thus could exclude people of the other States from its markets; and that each State retained complete control over its own ports, and thus, by its commercial policy, could, through the competition of ports, regulate or break down the commercial policy of another State in regard to its own ports and in regard to its own commerce.

These powers were large enough, not only to create State rivalries and State enmities, but to elevate the States of greatest commercial power into complete commercial, and finally into complete political, ascendancy over their weaker sister States.

Nor were these powers merely theoretical. They were brought into active and oppressive operation. They were made the means of commercial war by one State upon another.

For example:

Virginia, by her export duties and inspection laws, with the incidental tax, sought to keep her tobacco at home.

Maryland, by her inspection laws and taxes, sought to do the same with regard to her potash and pearlash.

Massachusetts prohibited the exportation of grain or unmanufactured calfskins and imposed an onerous inspection tax on exports to other States of tobacco, butter, and other products, while North Carolina laid, for a limited time, an embargo on the exportation to other States of corn, wheat flour, beef, bacon, and other necessities of life.

Turning to imports:

New York, by imposing an import duty, sought to exclude from its markets the butter, milk, and other dairy products of New Jersey and the firewood of Connecticut.

Rhode Island imposed an ad valorem tax of five per cent on all articles imported into that State from the other States as well as from foreign countries, with a proviso for reciprocal relief. And so with other States.

In regard to the commercial rivalry and war of ports, it was customary for States having available ports to impose an unlimited tax on all goods reaching this continent

through their ports, and thus subjecting, for the benefit of themselves, the people of the other States to a substantial burden of taxation.

For example, the ports of Boston and New York were at one time far behind Newport in the value of their imports, and Rhode Island, according to the Supreme Court of the United States, paid all the expenses of her government by duties on goods landed at her principal ports.

The condition at that time of commercial selfishness and greed between the States is thus described by Fiske in his work on the "Critical Period of American History, 1783-1789," at page 144:

"Meanwhile, the different States, with their different tariff and tonnage acts, began to make commercial war upon one another. No sooner had the other three New England States virtually closed their ports to British shipping, than Connecticut threw hers wide open, an act which she followed by laying duties upon imports from Massachusetts.

"Pennsylvania discriminated against Delaware; and New Jersey, pillaged at once by both her greater neighbors, was compared to a cask tapped at both ends. The conduct of New York became especially selfish and blameworthy. That rapid growth which was soon to carry the city and State to a position of primacy in the Union had already begun. After the departure of the British the revival of business went on with leaps and bounds. The feeling of local patriotism waxed strong, and in no one was it more completely manifested than in George Clinton, the Revolutionary general, whom the people elected Governor for nine successive terms. \* \* \* It was his first article of faith that New York must be the greatest State in the Union. But his conceptions of states-

manship were extremely narrow. In his mind, the welfare of New York meant the pulling down and thrusting aside of all her neighbors and rivals. \* \* \* Under his guidance, the history of New York, during the five years following the peace of 1783, was a shameful story of greedy monopoly and sectional hate. Of all the thirteen States none behaved worse except Rhode Island.

"A single instance, which occurred early in 1787, may serve as an illustration. The city of New York, with its population of thirty thousand souls, had long been supplied with firewood from Connecticut, and with butter and cheese, chickens and garden vegetables, from the thrifty farms of New Jersey. This trade, it was observed, carried thousands of dollars out of the city and into the pockets of detested Yankees and despised Jerseymen. It was ruinous to domestic industry, said the men of New York. It must be stopped by those effective remedies of the Sangrado school of economic doctors, a navigation act and a protective tariff.

"Acts were accordingly passed obliging every Yankee sloop which came down through Hell Gate, and every Jersey market boat which was rowed across from Paulus Hook to Cortlandt street, to pay entrance fees and obtain clearances at the custom-house, just as was done by ships from London or Hamburg; and not a cart-load of Connecticut firewood could be delivered at the back-door of a country-house in Beekman street until it should have paid a heavy duty. Great and just was the wrath of the farmers and lumbermen. The New Jersey legislature made up its mind to retaliate. \* \* \* Connecticut was equally prompt. At a great meeting of business men, held at New London, it was unanimously agreed to suspend all commercial intercourse with New York. Every mer-

chant signed an agreement, under penalty of two hundred and fifty dollars for the first offense, not to send any goods whatever into the hated State for a period of twelve months. By such retaliatory measures, it was hoped that New York might be compelled to rescind her odious enactment. But such meetings and such resolves bore an ominous likeness to the meetings and resolves which in the years before 1775 had heralded a state of war; and but for the good work done by the Federal convention another five years would scarcely have elapsed before shots would have been fired and seeds of perennial hatred sown on the shores that looked toward Manhattan Island."

But these discriminations and exactions of one State as against the trade of another, this fierce commercial rivalry, this internecine warfare which threatened the commercial destruction of some States and the undue elevation, prosperity and dominance of others, were not the only reasons for the insistent demand, which preceded and finally controlled the Constitutional Convention of 1787, in regard to the establishment of a system of just and equitable regulation of commerce between the States by an authority fairly representing them all.

The question of commercial regulation, in addition to its commercial relation to the trade between the existing States, possessed also a most important and commanding political aspect. The development of the great West was then going on and had been stimulated by the emigration thither from the older States incident to the readjustments after the war, and the settlement of the whole western region was proceeding with great rapidity. The West was spoken of by George Washington as a "rising world," and signified particularly,

in the minds of the statesmen of that day, the territory now constituting the States of Tennessee and Kentucky and the States afterwards carved out of the territory northwest of the Ohio and east of the Mississippi rivers. The question of the future political affiliations of this large and important territory was a question of prime and of vast importance to the then existing States. Great Britain was on the northern boundary with its Dominion of Canada, and Spain on the south commanded the mouth, and hence commanded the navigation, of the Mississippi River. The course of trade is determined by the inducements that are offered and the facilities it can command. And political relationships are strongly influenced by commercial ties and interests. It was therefore one of the most important problems of that day to bind this great and developing western country to the eastern States by the ties of intimate commercial intercourse. This could not be done if the eastern States could enrich themselves by imposts upon the commerce paid for by the people of the West or by excluding the competitive products of the West from the eastern markets.

Great Britain or Spain, close neighbors on the north and south, could easily outbid such a policy of narrowness and greed as the people of the West saw already in operation in many of the most important eastern States, and it was apparent that, whether or not such a policy should be adopted, could not be safely left to the individual States.

George Washington, in speaking of the future political affiliations of these pioneer western people, said:

"If we cannot bind these people to us by interest, and it is not otherwise to be effected but by a commercial knot, we shall be no more to them after a while than Great Britain or Spain, and they may be as

closely linked with one of those powers as we wish them to be with us, and, in that event, they may be a severe thorn in our side."

It thus became politically, as well as economically, necessary to find a way of fairly regulating commerce in the interest of all, free from the narrowness, the greed and the selfishness of particular States.

The only way of remedying these commercial evils, which were flagrant and were universally recognized, and of meeting the political exigencies of the situation, was, according to the practically universal belief of the day, to exclude the States from the power to regulate commerce among the States and with foreign nations, and to confer that power upon a central authority which should fairly and equitably represent them all.

The public consciousness on this subject was, prior to the convention, indicated in a great variety of ways and from a great variety of sources.

Alexander Hamilton declared for a central government with "complete sovereignty over all that relates to war, peace, trade, and finance."

James Monroe, as chairman of a committee of Congress, in 1785 submitted a report declaring that:

"The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article, \* \* \* and of regulating the trade of the States, as well with foreign nations as with each other." \* \* \*

James Madison moved in the General Assembly of Virginia a resolution for a convention of delegates of all the



States "to take into consideration the trade of the United States; to examine the relative situation and trade of the said States; to consider how far a uniform system in their commercial regulations be necessary to their common interest and permanent harmony," etc.

There were similar expressions of view in the legislatures of Rhode Island, of Connecticut, of New Jersey, in resolutions of town meetings and in reports of committees of Congress.

The Madison resolution resulted in the assembling of the Annapolis Convention in 1786 and in a recommendation, by the delegates there assembled to consider the regulation of commerce, that Congress should call a general convention of all the States to meet in Philadelphia on the second Monday in May, 1787, "to devise such further provisions as shall appear to be necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union."

This was the convention which framed the Constitution, and the declaration of the Supreme Court of the United States in the case of *Cook vs. Pennsylvania*, 97 United States, 574, is amply justified, to the effect that:

"A careful reader of the history of the times which immediately preceded the assembling of the convention which framed the American Constitution cannot fail to discover that the need of some equitable and just regulation of commerce was among the most influential causes which led to its meeting."

The result of its deliberations on the four large subjects of national concern enumerated by Alexander Hamilton—which are the four fundamental essentials of national existence and efficiency—and as to which Hamilton declared that the Federal Government should possess complete sovereignty,

namely, the purse, war, peace, and commerce, is exhibited in the following clauses of the Constitution:

"The Congress shall have power:

"To lay and collect taxes, duties, imposts and excises, to pay debts and provide for the common defense and general welfare. \* \* \*

"To borrow money on the credit of the United States.

"To regulate commerce with foreign nations and among the several States, and with the Indian tribes.

"To declare war. \* \* \*

"To raise and support armies.

"To provide and maintain a navy."

The fullness, the competency and the completeness of no one of these powers has ever been questioned, except of the power to regulate commerce.

It is universally recognized that it is a right of each State that the Federal Government shall provide for the common defense; that the Federal Government shall determine as between peace and war; that it shall raise and support armies and shall equip and maintain a navy.

But there are other rights of the States not less important and not less sacred. These include the right to avail themselves, separately and individually, of the protection guaranteed to them and to their people by the Federal Constitution against the selfishness in trade of their sister States.

In adopting the Commerce Clause of the Constitution they intended to secure protection against this very thing. In the light of the history of its adoption, is it not, since the Constitution, a right of New Jersey that New York shall not regulate the trade between them as it did when it excluded the products of New Jersey industry from the New York

markets; is it not a right of the State of Connecticut, since the Constitution, that its products shall not be excluded from the markets of New York and Boston by State action, and is it not since the Constitution, a right of each of the States that Virginia and North Carolina and Tennessee and the great food-producing States of the West shall not be able, as Virginia and North Carolina once did, to put an embargo upon the shipments of their products beyond their respective borders, and shall not be able to exclude the people of the other States from the riches of their farms, of their forests, of their mines, and of their factories? Is it not a right of each State that Congress alone, which represents all, shall be the exclusive arbiter of what is right and just in interstate and foreign trade, and that no State shall be permitted to advance itself at the expense, and to the disadvantage of the others, perchance by its narrowness, its greed, and its selfishness in trade?

The existence of this exclusive power in Congress to regulate interstate and foreign commerce is of no less importance—is in fact of far larger importance—as a State's right now, than it was when the Constitution was adopted.

Commerce itself in these one hundred and twenty-six years has assumed a far greater consequence in the affairs and destinies of men and of nations, than it had in those early days. Steam and electricity have come with their mighty revolutionizing influence and have brought all the States and all the nations into close and intimate commercial relationships. Men no longer deal in trade most largely with their immediate neighbors, but find it essential to their success to have free and unimpeded and adequate access to the markets of the world.

The interests of the producing States—particularly the States of the South and West where there are no markets of the first importance—imperatively require easy and quick transportation to the world's great market cities, such as New York, Philadelphia, Boston, and Chicago in this country, and Liverpool, London, Paris, and Berlin abroad.

It may be safely stated that at least eighty-five per cent of the trade of Tennessee, and of the United States generally, moves in interstate and foreign commerce. It traverses vast distances; it must pay low mileage rates to reach and to compete in these distant markets; it cannot, because of the value of time and the small margins of profit, permit frequent handlings or breakings of bulk.

To meet these economic conditions—to satisfy the essential needs and to accommodate the movement of this great traffic—it has become necessary to create long and continuous lines of railroad in the place of the short and disconnected lines which were once adequate to the requirements of trade. These large systems of railroad, which have come in obedience to the economic law which demands continuous, rapid, and unbroken transportation, necessarily extend across, and are, under existing law, in many respects subject to the varying policies of many States.

The problem of greatest magnitude which concerns the country in regard to them, is how their continuity of service shall be preserved unimpeded and what shall be the quality of adequacy and efficiency which their transportation facilities shall possess.

It must be remembered that the transportation capacity of the carriers marks the maximum limit of the trade, and hence of the producing capacity, of the people whom they

serve. No more will be—no more can be—produced than can be carried to market. Therefore, each State, being dependent for its prosperity upon the producing capacity of its people, is deeply concerned that the transportation capacity of the carriers which serve it shall be adequate and shall not be crippled or impaired.

A broad and wise policy in dealing with the instrumentalities of commerce is, therefore, a matter of supreme interest to all the States. A narrow, or niggardly, or selfish policy, if adopted by any one of the States through which a railroad passes, may seriously cripple and depress the commerce of every other State which the railroad serves.

No adequate conception of the railroad problem, as it affects the development of the country and the growth of its commerce, can ignore the necessity that transportation facilities must be all the time growing and improving to keep pace with the growth and expansion of commerce—otherwise there will be no growth or expansion of commerce.

Such an increase in railroad facilities involves the constant input of new capital, for no railroad is ever finished except in a dead country. It is a mere platitude to say that new capital can only be attracted by credit. While no one State through which a railroad passes can alone establish its credit, a single State can impair or destroy it.

If a railroad runs through and serves eleven States, ten of them may be guided by broad and liberal views and may be controlled by the policy of encouraging the establishment and maintenance of adequate transportation facilities. The eleventh may, however, have no adequate commercial outlook or may be temporarily under the domination of small and time-serving politicians. It may reduce rates on State

traffic so as to barely escape the line of confiscation. It may be unwilling that its State traffic shall contribute anything to the liberal program, favored by the other ten, which would build for the future and insure the present and continuing adequacy of the transportation facilities on which all are equally dependent.

In such a case, what shall be done? Shall the ten States bow to the will or caprice of the one and allow it to control? Shall they permit the narrow views of the one State to limit the standard or the character or the quality of facilities which their people shall enjoy?

If, on the other hand, the standard of facilities is not brought down to this low level and is to be made adequate to the needs of all, then the commerce of the other ten States, or interstate commerce, or both, must bear the burden, which the dissenting State has refused to share, of building up adequate transportation facilities.

In either case, the dissenting State, in a very effective way, regulates the commerce and the business opportunities of all. It either determines the standard of the commercial facilities, and therefore the commercial opportunities of the other States, or it throws on them an unfair and undue proportion of the burden of sustaining them at a level of higher efficiency.

Moreover, in the Shreveport case, recently decided by the Supreme Court of the United States, and in another State which I shall not more particularly identify, State rates have been greatly reduced for the avowed purpose of preserving State markets for State trade, and thus excluding and discriminating against the trade of other States.

Is it not a right of each of these States, thus oppressed by

the narrow and selfish policy of one, to have its commerce freed from these State restrictions and regulated by Congress, representing all the States, in accordance with the compact of the Constitution?

I have referred to the great importance to the welfare of all the States of transportation facilities—to the complete dependence of the States upon their adequacy, their efficiency and their readiness for service. I have called attention to the credit of the carriers—their capacity to obtain new money—as bearing an important, and in fact controlling, relationship to the problem of transportation.

In this connection, and as exerting an important influence on the financial capacity of the carriers, it is appropriate to consider their capacity to issue and to dispose of their securities.

It is manifest that, if such issue is to be regulated by the individual States, every State is at the mercy of the others. A bond, to be available in the market, must, as a rule—especially now when most bonds are necessarily junior liens—be secured upon the whole railroad line; and this crosses many States. One of the States, therefore, if it possesses the power to regulate the issue of securities of an interstate carrier, may disappoint and defeat a financial plan approved by all the other States and necessary to the carrier's transportation efficiency.

Even if the State does not press its authority to the extent of absolutely declining to sanction the issue, it may selfishly, and as a political expedient, attach a condition that a designated portion of the proceeds shall be spent within its borders where it may not in fact be needed, when the needs of interstate commerce and the commerce of other States fairly require that the whole shall be expended elsewhere.

The power of the State to consent, or to withhold its consent, is equivalent to a power to control the character and the location of additional transportation facilities against the views and the interests of all the other States.

But even if the necessity for the new capital is universally recognized, and the approval of the States is not ultimately withheld, the time necessary to permit the investigation and to secure the approval of so many would, or might, constitute a fatal obstacle in the way of a successful financial operation. Promptness—ability to avail without unreasonable delay of a favorable market—is essential to success in placing large financial offerings.

Conceive the not impossible case suggested by a recent dramatic event in the history of the world.

A railroad company has been maturing for some time past a large financial plan with the purpose of taking advantage of a general market such as we all know recurs at periods some times widely separated. A great steamer, say the *Lusitania*, sails at a moment of international tension. Those in charge of the financial policy of the railroad are justified in believing that something may happen to that steamer which will affect international relations and destroy for many months, and perhaps for years, a market for securities. So far as their own business preparation is concerned, they are ready to bring out the carefully matured plan and place their securities. It becomes then a question of days before the possibility of disaster to that steamer may be realized. Meanwhile some State commission, for some such reason as has been suggested, is delaying the approval of the issue. It does delay until the disaster happens and so defeats the financial plan, with the result that there is at least an indefi-

nite postponement of additional railroad facilities essential to the best interest of the commerce of the country.

Of course, the chances for such delay are increased just in proportion to the number of States which must be consulted in the matter of regulation.

From whatever standpoint, therefore, it be considered, the destructive effect of a power in the several States to determine and limit the financial capacity of the carriers, through a regulation of the issue of their securities, is apparent. It is manifest that the financial capacity of a carrier which serves many States is a matter of transcendent importance to them all. No one of them should be allowed to control or to injuriously affect it. It is a right of each of the States that a matter so important, and in which all of them have so vital an interest, shall not be controlled by one which may have a selfish interest or an illiberal policy.

It is a right of the States, in respect of this matter of common and supreme concern, that an authority, which is the authority of all, whose power is delegated by all, which represents all and which acts for all, shall alone be the arbiter of what may be conflicting views and interests, and shall alone regulate and control.

And yet sixteen States have enacted statutes, each asserting for itself the individual right to control the issue of stocks and bonds of interstate carriers. And the end is not yet, for many other States are considering legislation which will give to them a power which they see is already being exercised by others.

Another striking illustration of the exercise by one State of a power to discriminate against and to injure the commerce of other States and interstate commerce is found in the

State laws which impose heavy penalties for failure to furnish cars or other instrumentalities of commerce within a limited time.

One of the States now imposes a fine of five dollars for each day of delay; an adjoining State fixes the fine at one dollar per day; and the interstate commerce law fixes no per diem penalty at all. A case may well be imagined where a carrier is reasonably supplied with equipment, but a large portion of it has moved in the regular channels of commerce to a point on or off its line and distant from the place where the demand for it is made. If, under these circumstances, there is a demand for a car by a shipper of intrastate traffic in the State which imposes a heavy fine for delay, and is also made by a shipper in the State which imposes a light fine, and is also made by a shipper in interstate commerce as to which no fine at all is imposed, and there is at the moment, by reason of special circumstances, only one car available to meet all three of these demands, it, of course, results that the carrier in self-protection must deliver the one available car to the shipper in the State which imposes the largest fine, and the other must go without. In other words, the greediest, the most selfish and the most unreasonable State thus secures by its own laws a preference for its own commerce over the commerce of its sister States and over interstate commerce itself.

Is it not a right of the other States to have the question of a fair distribution of available car supply determined, not by one of the interested States, but by the authority which represents them all and can see that a rule of equity and fairness shall prevail?

In addition to what has been said, a long and formidable list of State statutes, already in effect, might be given, which,

without the consent of the other States, impose serious burdens of expense upon their commerce, and thus upon their people. All discriminate, or have the effect of discriminating, against their commerce, both State and interstate.

Thus, three States have passed laws making it illegal for a carrier having repair shops in the State to send any of its equipment, which it is possible to repair there, out of the State for repairs in another State; fifteen States have attempted to secure preferred treatment of their State traffic, either by heavy penalties for delays or by prescribing a minimum movement of freight cars, some of them requiring a minimum movement of fifty miles per day, whereas the average movement for the United States is not over twenty-six miles per day—one of these States imposing a fine of ten dollars per hour for the forbidden delay; twenty States have hours-of-service laws, varying from ten to sixteen hours; twenty States have full-crew laws; twenty-eight States have headlight laws, with varying requirements as to the character of the lights, and fourteen States have safety-appliance acts.

Let me take an illustration from a single class of these statutes. I will select the Full Crew laws of the States of New Jersey and Pennsylvania.

These laws impose upon the railroads operating within their respective limits an expense for unnecessary employees amounting to more than one million seven hundred thousand dollars a year. There is nothing in these State laws putting the burden of this expense on their own traffic alone. That burden extends to all the traffic these railroads carry, and thus the traffic of Virginia and Tennessee and Mississippi and of all the American States whose traffic enters New Jersey or Pennsylvania is laid under tribute by these State enactments.

Or, the proposition may be stated another way. The expense put upon the railroads by the Full Crew statutes of these two States would pay the interest at five per cent upon a capital fund of more than \$34,000,000.00. By requiring an amount equivalent to the interest on this capital to be expended on useless employees—at least on employees as to which the other States were not consulted—instead of being used to obtain new capital, these two States have by their own independent action reduced the borrowing capacity of the railroads to the extent of \$34,000,000.00. That amount of capital would have bought

1,360 Locomotives,

Or 3,400 Steel Passenger Cars,

Or 34,000 Freight Cars,

Or 1,133,000 Tons of Steel Rails,

Or would have block-signaled 13,600 miles of road.

Thus, facilities immensely valuable to the traffic of the other States have been made impossible—not by their own action, but by the independent action of New Jersey and Pennsylvania.

It is apparent that these and similar statutes which impose burdens and create discriminations violate the principle of just and equal treatment as against the States which have a more liberal policy, and constitute serious invasions of the field of regulation by the States which adopt them to the substantial prejudice of those which have not sought to obtain special or preferential treatment.

Again, it may be asked, is it not a right of the States that no one State shall possess the power of imposing a burden which the people of other States must help to bear, or of securing a preference for its own traffic over the traffic of the others?

In order to secure equality of burden and of privilege and the benefit of an adequate and efficient transportation system, the power to regulate commerce among the States and with foreign nations was, by their own action, withdrawn from the individual States and conferred upon Congress, which represents them all.

In fact, it may be truly said that the Constitution itself was the offspring of the insistent demand of the States for protection in trade against the other States. It is, therefore, peculiarly a right of the States to have this purpose fully and fairly carried into effect.

It seems not unprofitable to turn from the problem of commercial regulation, considered only as a problem of peace, to the lessons we must learn in regard to it from the great events now occurring on the continent of Europe.

It will be merely fatuous in us to close our eyes to the fact that the organization of society will be revolutionized in consequence of the historic developments of the past year.

We had fondly dreamed that the possibility of great wars had disappeared in the purer light of civilization, and that the barbaric and savage instinct of nations had been obliterated by the advance of moral and intellectual principles among mankind.

This dream has been rudely dissipated and the world has been made to realize that, when it comes to war, there has been no advance in humanity or morality since the Goths and Huns and Vandals fought and slew and pillaged fourteen centuries ago. The only difference is a difference in slaying power and in efficiency. These have advanced as Science has marked out the way. The lesson has been taught, in the blood and agony and tears of nations, that

hereafter, when it comes to the test, it is only the organized and efficient nation which can survive.

The world has marveled to see a nation, with comparatively small territorial possessions, rise in arms against the strongest nations of the earth and defy them all with its organized energy and power.

Whatever may be the ultimate result of this titanic struggle, the lesson of national efficiency has been taught and will never be forgotten. Its influence has reached even to this remote Western Hemisphere, and hereafter men will put a new value on our national union and will recognize the necessity for stronger and more perfect national organization to meet the dangers which all of us see may easily assail us. We have had it borne in upon us that the most militant and most efficient nation of Europe has outgrown its territorial limits and is looking for other lands to colonize, into which it will introduce its own national ideals, its own national efficiency and its own militant and aggressive spirit.

If it should happen that her policies embrace the acquisition and colonization of certain parts of South America, our Monroe Doctrine would stand in the path of her ambition. Whatever course we may then pursue—whether we limit the application of this doctrine to North America or undertake to enforce it as to the entire Western Hemisphere—we shall be confronted by greatly increased international complications and will need both national power and national efficiency to deal with the conditions which will be certain to arise.

Steam and Electricity and Science have done their work and have made great nations essential to meet these mighty forces. The day of the small, weak, and defenceless State has passed just as the day of the sailing vessel and the wooden ship is gone.

Wisdom requires us to recognize the change which these mighty forces and these mighty events have wrought. We cannot step backward and disintegrate ourselves into separate States. We must be efficient as a nation if we are to deal successfully with our national emergencies.

All this, I trust, will not involve us in the necessity of becoming a military nation, but it undoubtedly puts upon us the imperative obligation to organize our industrial life upon the most efficient basis. Our resources must not only exist, but they must be easily available. We must realize that the agitation must cease for a divided sovereignty in respect of functions which are in essence national. We must appreciate that efficient transportation is an essential condition of national efficiency, and if we are to halt or weaken our transportation systems at State lines, by permitting the imposition of burdens or the exercise of hurtful, inharmonious or unwise regulation, we will make national efficiency impossible. The creation of transportation facilities for a great nation is not the work of a day. It is a matter of slow and difficult growth and is the work of "forward looking" men, who must anticipate conditions and have facilities in readiness for use when they are needed.

Is it wise for us to subject a matter of such universal concern and of such national importance to the uncertain policies and partial and inadequate outlook of a single State? The Constitution confides it to Congress, which represents the general welfare and common interests of all the States. The evolution of forces, the progress of events, and the growth of nations emphasize the wisdom and necessity of reposing the power of commercial regulation, which so essentially involves the national interest and the national efficiency, in the hands of the authority which is alone re-

sponsible to all the people for the performance of national duties and the preservation of our national liberty.

If it was to the interest of the individual States to have a single and impartial regulation of interstate commerce and its instrumentalities when the question was the free introduction into New York of the firewood of Connecticut and the dairy products of New Jersey, it is far more so now in view of the influential relationship which transportation has come to bear to our national efficiency and to the liberties and destinies of our people. For we must remember that in a period given up to a frenzy for overlegislation no business interest dependent for its stability upon the public confidence can long survive, if it is assailable, as the transportation business now is, on so many sides and from such an infinite variety of sources.

We must realize that inevitably commerce will eventually be regulated exclusively by the Federal Government. The existing system of private ownership cannot long endure if it is to be permanently subjected to the increased burdens and conflicting policies of a dual, or of a many sided, regulation. It must be put under one master with a harmonious and constructive policy, or it will inevitably fail. When this failure comes and governmental ownership takes the place of the present system, the States will be deprived of all power, and Congress alone will necessarily regulate every detail of railroad management and all the instrumentalities of commerce.

It must also be realized that the regulation of interstate commerce and its instrumentalities is no violation of the rights of the States, is no invasion of their prerogatives, is in no sense in derogation of their reserved sovereignty, but in reality is merely the specific performance of the contract which each State bargained for when it subscribed to the



Constitution. It is their covenanted right, and the covenanted right of each of them, as well as their highest interest, that the commerce in which one in common with another State is interested shall be regulated by the fair and impartial judgment of the authority which alone springs from and is responsible to them all.

As was said by Chief Justice Marshall in *McCullough vs. Maryland*, 4 Wheaton, 405, in speaking of the powers of the Federal Government, of which one is the power to regulate commerce among the States and with foreign nations:

"It is the Government of all; its powers are delegated by all; it represents all and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them."

Perhaps in no State of the Union are these views more universally accepted than in the State of Tennessee.

Like other States, she has been confronted with the great economic problems which have agitated and perplexed the people. Temptation to seize an immediate and temporary advantage has been held out to her, as it has been presented to the other States. But her people have not been seduced into extremes or into the excesses of a short-sighted, narrow and destructive policy.

They have built for the future, and, by their legislative history of constructive fairness, have pointed the way to better things and have established the position of their State high in the annals of the soundest statesmanship of America.

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